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12 HANDI-CRAFT COMPANY

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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION

17 WHITTLESTONE, INC., a California
18 corporation,

No. CV 08-04193 SBA

19 Plaintiff,
20 v.
21 HANDI-CRAFT COMPANY, a Missouri
22 corporation,

Assigned to the Hon. Saundra B.
Armstrong, Courtroom 3

23 Defendants.

**STIPULATION AND ORDER TO
MODIFY ORDER FOR PRE-TRIAL
PREPARATION TO ALLOW FILING
OF FIRST AMENDED ANSWER TO
SECOND AMENDED COMPLAINT
AND FIRST AMENDED COUNTER-
CLAIM**

24 Action Filed: September 4, 2008
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2 HANDI-CRAFT COMPANY,
3 Counter-Claimant,
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5 v.
6 WHITTLESTONE, INC.,
7 Counter-Defendant.
8

9 Pursuant to Civil Local Rules 7-1(a)(5) and 7-12 and Federal Rules of Civil Procedure
10 (“FRCivP”) 16(b)(4), Plaintiff Whittlestone, Inc. (“Whittlestone”) and Defendant Handi-Craft
11 Company (“Handi-Craft”), by and through their counsel, hereby stipulate to the following:

12 **WHEREAS** the Court entered an Order for Pre-Trial Preparation on May 20, 2011.
13 The deadline for amending the pleadings, as established by such Order, was June 8, 2011.

14 **WHEREAS** Handi-Craft represents that on July 8, 2011 it acquired from a third party
15 various e-mails exchanged between a resident of the United Kingdom and the principal of
16 Whittlestone.

17 **WHEREAS** Handi-Craft believes that the communications in the above e-mails
18 provide it with facts supporting an affirmative defense of fraud in the inducement as to the
19 claims made in Plaintiff’s Second Amended Complaint. Handi-Craft also believes that the e-
20 mails provide it with facts supporting a cause of action against Whittlestone for fraud in the
21 inducement.

22 **WHEREAS** Handi-Craft represents that, prior to July 8, 2011, it was not in possession
23 of the above e-mails and did not know they existed. In addition, Handi-Craft represents that it
24 was not, prior to July 8, 2011, otherwise aware of the facts contained in the e-mails nor was it
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1 in possession of documents or other information that would have permitted it to ascertain facts
2 in support of its claim for fraud in the inducement at any time before July 8, 2011.

3 **WHEREAS** Handi-Craft prepared a [Proposed] First Amended Answer to Second
4 Amended Complaint and First Amended Counter-Claim containing both an affirmative
5 defense and cause of action for fraud in the inducement and forwarded it to counsel for
6 Whittlestone on July 29, 2011.

7 **WHEREAS** on August 2, 2011, Handi-Craft received correspondence from counsel
8 for Whittlestone requesting that Handi-Craft provide Whittlestone with facts supporting good
9 cause for modifying the Order for Pretrial Preparation and permitting the filing of its proposed
10 amended answer and counter-claim. Handi-Craft responded to Whittlestone's request on
11 August 5, 2011. Whittlestone agreed to stipulate to the filing of Handi-Craft's proposed
12 amended answer and counter-claim on August 8, 2011.

14 **WHEREAS** Handi-Craft asserts that good cause exists for the relief requested by way
15 of this stipulation.

17 Accordingly, Handi-Craft respectfully requests an Order from the Court as follows:

18 1. That the May 20, 2011 Order for Pretrial Preparation be modified to allow Handi-
19 Craft to file its First Amended Answer to Second Amended Complaint and First Amended
20 Counter-Claim, attached hereto as Exhibit A, no later than 7 days following notice of the
21 Court's execution of an Order pursuant to this Stipulation.

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IT IS SO STIPULATED.

MORGAN, FRANICH, FREDKIN & MARSH

Dated: August 19, 2011

/s/ David A. Kays

By: _____
David A. Kays
Attorneys for Plaintiff/Counter-Defendant
WHITTLESTONE, INC.

DATED: August 19, 2011

BURNHAM BROWN
HERZOG CREBS LLP

/s/ Rohit A Sabnis

By

ROHIT A. SABNIS

Attnorneys for Defendant/Counter-Claimant
HANDI-CRAFT COMPANY

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: August 30, 2011

Saundra B. Armstrong
HON. SAUNDRA B. ARMSTRONG

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